

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JULIA M. THEODORE

VS.

**WALMART INC., a Foreign For-Profit
Corporation, John Doe, Unknown
Pallet Jack Operator**

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CIVIL ACTION NO.

JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant Walmart Inc. formerly known as Wal-Mart Stores, Inc. (incorrectly sued, proper entity is Wal-Mart Stores Texas, LLC), (“Walmart”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1332.

I. INTRODUCTION

1. Pursuant to 28 U.S.C. § 1441, *et seq.*, this civil action is removed from the 68th District Court of Dallas County, Texas, where this matter was pending under Cause No. DC-21-06656 in a matter styled *Julia M. Theodore vs. Walmart Inc., a Foreign For-Profit Corporation, John Doe, Unknown Pallet Jack Operator* (the “State Court Action”).

II. NATURE OF THE SUIT

2. This is a premises liability/negligence claim lawsuit alleging claims of personal injury resulting from Defendant’s actions or inactions. *Plaintiff’s Original Petition pp. 2-3.*

3. Plaintiff Julia M. Theodore alleges she suffered injuries when she was allegedly hit by a pallet jack being driven by a Walmart employee while shopping in the store. *Id. at p. 3.*

4. Plaintiff brought a premises liability/negligence claim against Wal-Mart and Defendant John Doe in the 68th District Court of Dallas County, Texas. *See Plaintiff's Original Petition*, at p. 1.

5. Plaintiff asserts claims of negligence as to John Doe for actions as an employee within the course and scope of his/her employment with Wal-Mart. *See Plaintiff's Original Petition*, at p. 5 (whereby Plaintiff admits "employees and/or agents are acting in the course and scope of their employment with the Defendants **at all relevant times.**" (*emphasis added*)).

6. Plaintiff seeks damages in excess of \$200,000. *Id.* at p. 2.

III. TIMELINESS OF REMOVAL

7. Plaintiff commenced this lawsuit by filing her Original Petition on May 26, 2021. Defendant Walmart accepted service on June 9, 2021 through its agent, CT Corporation. Thus, removal is timely.

IV. BASIS FOR REMOVAL JURISDICTION

8. Removal is proper under 28 U.S.C. §§ 1441 and 1332 because there is complete diversity of citizenship between Plaintiff and Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. Plaintiff is now and was at the time of the filing of this action a legal Texas resident residing and domiciled in Dallas, Dallas County, Texas. *Plaintiff's Original Petition*, p. 2. Accordingly, for diversity purposes, Plaintiff is a citizen of Texas.

10. Plaintiff sued and served Walmart Inc. Walmart Inc. is a Delaware Corporation with its principal place of business in Arkansas. However, the correct corporate entity/Defendant is Wal-Mart Stores Texas, LLC. Wal-Mart Stores Texas, LLC is now and was at the time of the filing of this action a Delaware Limited Liability Company with its principal place of business in Arkansas. The citizenship of an LLC is the same as the citizenship of all its members. *Harvey v.*

Grey Wolf Drilling Co., 542 F.3d 1077, 1080 (5th Cir. 2008). Wal-Mart Real Estate Business Trust is the sole member of Wal-Mart Stores Texas LLC. Wal-Mart Real Estate Business Trust is a statutory business trust organized under the laws of Delaware with its principal place of business in Arkansas. Wal-Mart Property Co. is the sole trustee of Wal-Mart Real Estate Business Trust. Wal-Mart Property Co. is a Delaware corporation with its principal place of business in Arkansas. Wal-Mart Stores East, LP is the sole owner of Wal-Mart Property Co. Wal-Mart Stores East, LP is a Delaware Limited Partnership with its principal place of business in Arkansas. WSE Management, LLC is the general partner, and WSE Investment, LLC is the limited partner of Wal-Mart Stores East, LP. WSE Management, LLC and WSE Investment, LLC are both Delaware Limited Liability Companies with their principal place of business in Arkansas. The sole member of WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC. Wal-Mart Stores East, LLC is a limited liability company organized under the laws of the State of Arkansas with its principal place of business in Arkansas. Walmart Inc. is the sole owner of Wal-Mart Stores East, LLC. Walmart Inc. is a Delaware Corporation with its principal place of business in Arkansas. Accordingly, for diversity purposes, Wal-Mart is a citizen of Delaware or Arkansas.

11. There is and has been at all times relevant to this Notice of Removal complete diversity of citizenship between Plaintiff and Defendant Wal-Mart.

12. Plaintiff has not served Defendant John Doe, and the statute of limitations has expired. Moreover, Plaintiff has not identified John Doe's citizenship or state of residency.

13. Upon information and belief, the amount in controversy exceeds the jurisdictional requirement of \$75,000, exclusive of interest and costs. Plaintiff alleges she suffered serious and permanent personal injuries to her body. *See Plaintiff's Original Petition p. 5*. Plaintiff seeks damages for physical pain past and future, mental anguish past and future, physical impairment past and future, and medical care and hospital expenses past and future. *Id. at p. 5*. Plaintiff's

Petition seeks monetary relief over \$200,000 but less than \$1,000,000. *Id. at p. 2*. The sum claimed by Plaintiff should control the evaluation of amount in controversy. It is facially apparent from the Plaintiff's Petition that the Plaintiff's claims are likely to exceed \$75,000 in damages, exclusive of interest and costs.

14. In an effort to confirm the amount in controversy, Wal-Mart sent correspondence to Plaintiff's counsel on June 15, 2021 requesting Plaintiff stipulate she is seeking damages less than \$75,000 in damages, exclusive of interest and costs. Plaintiff did not agree to the stipulation; thus, there is a presumption that the amount in controversy in this case exceeds \$75,000 exclusive of interest and costs. *Heitman v. State Farm Mut. Auto. Ins. Co.*, No. 5:02-CV-0433-D, 2002 U.S. Dist. LEXIS 6192 (N.D. Tex. April. 9, 2002).

V. THIS NOTICE IS PROCEDURALLY CORRECT

26. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b), because Defendant Walmart is not a citizen of Texas, the state in which the action was brought. This action is removable to this Court and venue is proper because this United States District Court and Division embraces the place where the State Court Action was pending. 28 U.S.C. §§ 124(a)(1), 1441(a).

27. Walmart has attached to this Notice of Removal the documents required by 28 U.S.C. § 1446(a) and Local Rule 81.1 as follows:

- A: Index of all documents filed in the State Court Action.
- B: Docket Sheet in the State Court Action.
- C: Copies of all process, pleadings and orders filed in State Court.
- D: Signed Certificate of Interested Persons.

28. Wal-Mart is filing with the Notice of Removal a completed Civil Cover Sheet, a Supplemental Civil Cover Sheet, and separate Disclosure Statement and Certificate of Interested Persons.

29. Wal-Mart retains the right to supplement the jurisdictional allegations by affidavit, declaration, or otherwise should Plaintiff challenge the allegations in a motion to remand or other filing.

30. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to all parties and to the Clerk of the 68th Judicial District Court of Dallas County, Texas.

31. Plaintiff has not demanded a jury trial in the State Court Action. Wal-Mart has demanded a jury trial in the State Court Action.

32. Trial has not commenced in the 68th Judicial District Court of Dallas County.

V. CONCLUSION

33. Since diversity jurisdiction exists over Plaintiff's claim as set forth in Plaintiff's Original Petition, Defendant desires and is entitled to remove the lawsuit filed in the 68th Judicial District Court of Dallas County, Texas to the United States District Court for the Northern District of Texas, Dallas Division.

WHEREFORE, PREMISES CONSIDERED, Defendant Walmart Inc., a Foreign For-Profit Corporation, pursuant to and in conformance with the statutory requirements, remove this action from the 68th Judicial District Court of Dallas County, Texas, to this Court. Defendant further prays the Court dismiss Plaintiff's claims against Defendant John Doe.

Respectfully submitted,

By: /s/ Bevan Rhine
BEVAN RHINE
Texas Bar No. 24036265
brhine@cobbmartinez.com

COBB MARTINEZ WOODWARD PLLC
1700 Pacific Avenue, Suite 3100
Dallas, TX 75201
(214) 220-5208 (direct phone)
(214) 220-5258 (direct fax)

**ATTORNEYS FOR DEFENDANT
WALMART INC.**

CERTIFICATE OF SERVICE

I certify a true and correct copy of this document has been forwarded to counsel for Plaintiff either by e-service, telefax, electronic mail, and/or regular U.S. mail on this 8th day of July, 2021:

Victor L. McCall
Atwood & McCall, PLLC
4144 N. Central Expwy., Suite 910
Dallas, TX 75204
972.665.9600 / fax 214.736.2960
victor@atwoodmccall.com

/s/ Bevan Rhine
BEVAN RHINE